ANNEXURE

THE MYSORE STATE CIVIL SERVICES (REGULATION OF PROMOTION, PAY AND PENSION) BILL, 1973.

(L.A. BILL No. 18 OF 1973.)

A Bill to provide for the prospective Promotions of civil servants and to regulate the pay seniority pension and other conditions of service of civil servants in the State of Mysore including those that are allotted or deemed to be allotted to serve in connection with the affairs of the State of Mysore under or in pursuance of section 115 of the States Reorganisation Act, 1956.

Whereas on the basis of the ranking of civil servants in the several inter-State seniority lists prepared in pursuance of sub-section (5) of section 115 of the States Reorganisation Act, 1965 (Central Act 37 of 1956), courts have directed the making of retrospective promotions to statutory and other offices;

And whereas as held by the Supreme Court in *Ajit Singh* Vs. *State of Punjab*, reported in All India Reporter 1967, Supreme Court 856 and in Income- Tax Officer, *Alleppey* Vs. *N. C. Ponnoose*, reported in All India Reporter 1970 Supreme Court 385 appointments of civil servants to offices in which statutory functions are exercisable cannot be made with retrospective effect;

And whereas retrospective promotions involve payment of large sums of money to persons who have not worked in the promotional posts or offices concerned, to the detriment of the finances of the State, besides involving retrospective reversions rendering invalid the statutory functions discharged by the persons reverted;

And whereas retrospective promotions preclude the determination of the suitability of the civil servants to hold the promotional posts or offices and will enable them to continue in such posts or offices only on the ground of their promotions, resulting in the continuance of even unsuitable civil servants in promotional posts or offices to the detriment of public interest;

And whereas it is necess ry and expedient to provide against the said consequences;

And whereas the Central Government has given previous approval under the proviso to sub section (7) of section 115 of the States Reorganisation Act, 1956 (Central Act 37 of 1956) communicated in letter No. 5/5/73 SR(S) dated 22nd February 1973 of the Government of India, Cabinet Secretariat Department of Personnel and Administrative Reforms;

Be it enacted by the Mysore State Legislature in the Twenty-fourth Year of the Republic of India as follows:—

1 *Short title and commencement.*—(1) This Act may be called the Mysore State Civil Services (Regulation of Promotion, Pay and Pension) Act, 1973.

(2) This section and sections 2, 4, 5, 6, 7, 8, 9, 10 and section 12 shall be deemed to have come into force on the first day of November, 1956, and the remaining sections shall come into force at once.

2. Definitions.–In this Act unless the context otherwise requires.–

(*a*) 'allottee' means a Government servant allotted or deemed to have been allotted to serve in connection with the affairs of the State of Mysore under or in pursuance of section 115 of the State Reorganiation Act, 1956 (Central Act 37 of 1956);

(*b*) ' civil servant, means a person who is a member of a civil service of the State of Mysore who holds a civil post under the State of Mysore and includes an allottee ;

(*c*) 'final seniority list, means inter-State seniority list of allottees prepared in accordance with the decisions of the Central Government under the provisions of sub-section (5) of section 115 of the States Reorganisation Act, 1956 (Central Act 37 of 1956);

(*d*) ' inter-State seniority list, means an inter-State seniority list prepared from time on the basis of the seniority in which the eligibility of an allottee to promotion to the higher posts is considered.

(*e*)' rules of recruitment, means the rules of recruitment mader in respect of recruitment to any service post, office or class of posts of offices.

3. *Promotions, etc, of civil Servant*.—(1) No civil servant shall

(*a*) ordinarily be entitled to promotion to any post or office with effect from a retrospective date ;

(*b*) only on the ground of his seniority in a seniority list, be promoted to any post or office unless the authority competent to promote determines his eligibility and promotes him by a written order to officiate in such post or office; and no such civil servant shall, save as provided in section 9, be entitled to continue in such promoted post or office unless the said authority assesses the work of such civil servant in such post or office and declares by a wirtten order that he had satisfactorily completed his officiation;

(*c*) when promoted to officiate in any post or office save as provided in Section 9, be entitled to be considered for promotion to the next higher post or office unless he is declared to have satisfactorily completed his officiation in the first promoted post or office.

(2) In matters not specified in sub-section (1) the provisions contained in sections 4, 5 6, 7 and 8 shall *mutatis mutandis* be applicable.

4. *Promotions, etc., of allottees.*—(1) Where the seniority of an allottee as specified in the provisional inter-State seniority list in any class of post or office has been altered in the final seniority list relating to that class, every promotion made on any date after the first day of November, 1956, on the basis of seniority-*cum*-merit, shall be reviewed with reference to the qualifications and other conditions laid in the rules of recruitment applicable at the relevant time for such promotion and the ranking in the final seniority list assigned to the allottees in that class of post or office. If any person senior in rank than the person promoted is held to be suitable for promotion on such date (hereinafter in this section referred to as the date of eligibility), an order shall, subject to section 9, be made promoting the said person to officiate in the said post or office with effect from a prospective date to be specified in the order.

(2) As soon as may be, after the person promoted under sub-section (1) is declared to have satisfactorily completed the period of officiation in the promoted post or office, an order shall, subject to section 9, be made directing that he shall be entitled to initial pay on the date of actual promotion to the post or office as if he was holding the said post or office from the date of eligibility and drawn the pay and allowances accordingly, but such person shall not be entitled to payment of any arrears for the period prior to the date of his actual promotion. His rank in the seniority list of persons in the class or grade of service to which he is promoted shall be fixed as if he had been promoted to that class or grade of service on the date of eligibility.

(3) Where consequent upon the review of promotions made under sub-section (1) it is found that an allottee, who, before the coming into force of sections 3, 11 and 13 had been promoted to a higher class or grade of service is found eligible for promotion to that higher class or grade of service from a date prior to the date of actual promotion and subject to section 9, is declared to have satisfactorily completed the period of officiation in the promoted post or office, an order shall be made directing that he shall be entitled to initial pay on the date of actual promotion to the post or office as if he was holding the said post or office from the date on which he is found eligible for promotion and drawn the pay and allowances accordingly, but he shall not be entitled to payment of any arrears for the period prior to the date of his actual promotion. His rank in the seniority list of persons in the class or grade of service to which he is promoted shall be fixed as if he had been promoted to that class or grade of service on the date on which he is found to be eligible for promotion.

(4) Where an order is made in respect of any allottee under sub-section (2) or, as the case may be, under sub-section (3), and the ranking in the seniority list of persons in the promoted class or grade of service, as fixed by such order, stands revised, the

promotions made from that class or grade of service to the next higher class or grade of service shall be reviewed in accordance with and subject to the provisions of sub-section (1) as if reference therein to the final seniority list were references to the aforesaid revised seniority list and the provisions of sub-section (2) shall, *mutatis mutandis*, be applicable to every promotion so made.

(5) The provisions of sub-section (4) shall, *mutatis mutandis*, be applicable in respect of promotions of allottees to the next higher classes or grades of the same service.

(6) The provisions of sub-section (3) shall *mutatis mutandis*, be applicable in respect of review of promotions of allottees made under sub-sections (4) and (5).

(7) Where in respect of promotions on the basis of seniority-*cum*-merit from any class or grade of service to the next higher class or grade of service, the rules of recruitment require service for a minimum period in the former class or grade to become eligible for promotion, the said period shall in its application to an allottee eligible for promotion under this section, be deemed to be the period during which he satisfactorily completes the period of officiation in the post or office of that class or grade of service and no such minimum service shall be necessary in the case of an allottee whose record of service was satisfactory on the relevant dates of eligibility or the relevant dates on which he is found to be eligible for promotion.

(8) In respect of promotions from any class or grade of service by selection to the next higher class or grade of service, where an allottee would have been eligible for consideration if he had been promoted to the former class or grade of service on the basis of his seniority in the final seniority list, such allottee shall, subject to section 9, be considered for selection to the next higher class or grade of service, immediately after he satisfactorily completes the period of officiation in the said former class or grade of service. If he is selected and promoted to the higher class or grade of service and satisfactorily completes his period of officiation in the said class or grade, he shall be entitled to initial pay on the date of actual promotion to the said class or grade as if he was holding the said post or office from the date on which his immediate junior in the lower class or grade was promoted to the said class or grade of service, but he shall not be entitled to payment of any arrears for the period prior to the date of his actual promotion. His rank in the seniority list of the persons in the said class or grade shall be fixed as if he had been promoted on the date immediately preceding the date on which his immediate junior in the lower class or grade was promoted to the selection class or grade of service.

(9) An order under sub-section (2) in respect of an allottee who had been reduced to a lower stage in a time scale and whose increment had been withheld shall be subject to such modification as the State Government may, by order, direct.

(10) No promotions of allottees made on the basis of any provisional inter-State seniority list shall be reviewed except after the publication of the final seniority list and in the manner provided in this section.

Explanation.—For purposes of this sub-section provisional inter-State seniority list includes every inter-State seniority list used as the basis for carrying on the day to day administration whether prepared by the State Government or declared by the court as operative until the publication of the final seniority list.

5. *Provision relating to reversion of allottees.*— (1) Where consequent upon the review of promotions under section 4, any allottee promoted to any class of posts or offices is found not entitled to continue in that class, he shall be reverted to,—

(*a*) the class of posts or offices to which he would have been eligible for promotion on the basis of his rank in the final seniority list, or

(*b*) the class of posts or offices in which he would have continued on the basis of his rank in the final seniority list.

(2) Where any reversion is made under clause (*a*) of sub-section (1), the rank of the allottee in the seniority list of that class of posts or offices shall be fixed as if he had been promoted to that class of posts or offices on the basis of his rank in the final seniority list.

6. *Provision relating to revision of pensions etc.*— Where consequent upon a review of promotions under section 4, it is found that any allottee who has retired from service before an order under sub-section (1), (3), (4), (5), (6) or (8) of section 4 is made, or before the expiry of the period of his officiation in the promoted post or office would have been eligible for promotion to the next higher class or grade of service under the said section if the final seniority list had been published on the first day of November, 1956, his pension and death-*cum*-retirement gratuity shall be revised with reference to the pay and allowaces he would have drawn if he had been promoted to the next higher class or grade of service on the date on which he was found eligible for such promotion with reference to his rank in the final seniority list and the relevant recruitment rules, and as if he had satisfactorily completed the period of officiation in the said class or grade of service.

7. *Provision relating to payments to heirs of deceased allottess.*— Where consequent upon a review of promotions under section 4, it is found that any allottee who before an order under sub-section (1), (3), (4), (5), (6) or (8) of section 4 is made, or before the expiry of the period of officiation in a promoted post or office has while in service or after retirement died, would have been eligible for promotion to the next higher class or grade of service on any day under the said saction if the final seniority list had been published on the first day of November, 1956, his pension and death-*cum*-retirement gratuity shall be revised, with reference to the pay and allowances he would have drawn if he had been promoted to the next higher class or grade of service on the date on which he was found eligible for such promotion with reference to his rank in the final seniority list and the relevant recruitment rules and as if he had satisfactorily completed the period of officiation in the said class or grade of service, and the excess amount payable on such revision of pension and death-*cum*-retirement gratuity shall be paid to the heirs of the said deceased allottee

8 *Sections not applicable to certain allottees.*—Provisions of sections 4, 5, 6 and 7, in so far as they relate to promotion on the basis of ranking in the final seniority list shall not be applicable to an allottee who,—

(*a*) has been dismissed, removed or compulsorily retired from service as a penalty ;

(*b*) has been reduced to a lower service, grade or post or office or whose promotion has been withheld as a penalty ;

(*c*) has been retired from service in public interest ;

(*d*) has been held unsuitable for promotion to any post or office or class of posts or offices ; or

(*e*) after promotion has been reverted to the lower post or office on the ground of unsuitability to hold the higher post or office or class of posts or offices.

9. *Officiation* —(1) Save as provided in sub-section (2) the rules relating to officiation made under the proviso to article 309 of the Constitution of India shall apply for purposes of officiation under this Act.

(2) A civil servant shall be deemed to have satisfactorily completed the period of officiation in the promoted post or office and may be promoted to one or more higher classes or grades of service to which he is found eligible for promotion on the basis of his seniority in the seniority list including the final seniority list if his record of service on the date or dates on which he is found eligible for such promotion is satisfactory and indicates that he is eligible for promotion to the next higher cadre and if he possesses the qualifications

prescribed in the rules of recruitment applicable at the relevent time for such promotion.

10, *Removal of difficulties.*—If any difficulty a ises in the application of this Act to any case, the State Government may make such orders as may be necessary for the purpose of removing the difficulty.

11. *Over-riding effect.*—(1) The provisions of this Act or of any order made thereunder shall have effect not withstanding anything inconsistent therewith contained in any law or order having the force of law or rules made under the proviso to article 309 of the Constitution of India for the time being in force or in any provision regulating the conditions of service of any allottee or in any order made by virtue of any such law, rules or provisions.

(2) Notwithstanding anything contained in any judgment, decree or order of any court or other competent authotity the rights to which a civil servant is entitled to in respect of matters to which the provisions of this Act are applicabe, shall be determined in accordance with the provisions of this Act, and accordingly, any judgment decree or order directing promotion or consideration for promotion of civil servants and payment of salaries and allowances consequent upon such promotions shall be reviewed and orders made in accordance with the provisions of this Act.

12. *Repeal.*—The Mysore State Civil Services (Allottees) (Special) Rules, 1971 are hereby repealed.

13. *Savings.*—Save as provided in sesction 11 nothing in this Act shall be deemed to affect the operation of the provisions of the Constitution of India in relation to the determination of the conditions of service of persons serving in connection with the affairs of the State of Mysore.

Statement of Objects and Reasons

For reasons beyond control the finalisation of Inter State Seniority Lists was unavoidably delayed. Information had to be collected from several offices and partent States, clarification had to be obtained, documents and records had to be obtained, etc., In addition there were court proceedings results of which had to be awaited. In the meantime: in the exigencies of public service, promotions were being made on the basis ot the provisional inter state seniority lists. These promotions are to be reviewed in the light of the changes made in the final inter-State seniority lists which have now been published in almost all departments. Demand for the same had been made and in a good number of cases courts have been approached. Directions have

been given by courts to consider the case for retrospective promotions and to give consequential monetary benefits also. In some cases similar relief to more than one promotion has also been granted. In all these cases some other persons would have discharged the duties of those promotional posts having been promoted on the basis of the provisional lists and would have been paid the full pay and allowances attached to the said posts. Restrospective promotion as per court directions may result in double payments—one set already paid and another set to the person now promoted. In other words two persons would be paid for discharging duties of one and the same post. All this involves very heavy financial burden on the State

Besides it is well settled by several decisions that it is not legally permissable to appoint persons retrospcetively to statutory posts. Retrospective promotions inevitably result in rstrospective reversions and thereby render ineffective statutory functions discharged by the persons so reverted leading to complications. It is necessary to regulate all these matters. Hence Government issued the Mysore State Civil Services (Allottees) (Special) Rules, 1971 providing for review and prospective promotions. It was expected that the said rules would resolve the difficulties pointed out above. But when the said rules were pleaded the High Court in some cases directed that retrospective promotions and consequential financial benefits should be given. The view taken, apparently, is that the said rules do not prohibit making retrospective promotions and giving consequential monetary benefits. The State Government has filed appeals against some of these judgments to the Supreme Court but in cases where the court has fixed specified dates for implementing the directions contempt applications have been filed against the State. Unless the effect of the said judgments is taken away by suitable legislation Government will have to pay huge sums of money on the basis of retrospective promotions for work not done. It is felt not legally possible to overcome the court decisions by making rules under the proviso to article 309 of the Constitution.

Uniform provisions in the case of civil servants other than allottees is necessary to avoid discrimination.

Hence the Bill.

Necessary approval of the Central Government in terms of the proviso to sub-section (7) of section 115 of the States Reorganisacton Act, 1956 has been obtained.

Financial Memorandum

Clauses 6 and 7 of the Bill provide for refixation of pension and gratuity of persons who have retired prior to the date of coming into

force of this Act. It is not possible to assess the proble expenditure on this account as it depends upon the number of persons whose pensions and gratuity are going to be revised and the extent to which they will be revised. On the whole there is not likely to be any net exyenditure from the Consolidated Fun ', as there will be substantial savings under arrears of pay and allowances.

D. DEVARAJ URS

TE. HANUMANTHAPPA,
Secretary.

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